Ketua Pengarah Hasil Dalam Negeri v Perbadanan Kemajuan Ekonomi Negeri Johor

HIGH COURT (JOHOR BAHRU) — CIVIL APPEAL NO MT3–14–01 OF 1999
YAACOB ISMAIL J
23 DECEMBER 2002

Revenue Law *— Income tax — Exempt income — Whether the treatment of income exempt from tax by the appellant was correct — Whether the apportionment by the appellant of the gifts as allowable deductions against aggregate income was correct*

The respondent was assessed to income tax for the years of assessment 1991 and 1992. He appealed pursuant to s 99 of the Income Tax Act 1967 ('the Act') for the reasons that the appellant had failed to disregard income exempt from the tax computations in the assessment in arriving at the aggregate income of the respondent, and further the appellant had wrongfully apportioned the gifts made as deductions from the aggregate income to arrive at the chargeable income of the respondent. The appeal was heard by the Special Commissioners of Income Tax ('the commissioners') who agreed that the computations by the appellant were wrongfully made and therefore the assessments were ordered to be revised accordingly. The commissioners ruled that the donation made by the respondent should only be deducted against the non-exempt income. The appellant being dissatisfied with the decision of the commissioners, appealed to the High Court. The issues for the determination of the court were: (i) whether the treatment of income exempt from tax by the appellant was correct; and (ii) whether the apportionment by the appellant of the gifts as allowable deductions against aggregate income was correct.

Held, dismissing the appeal with costs.

Nowhere in the case of *MCIS v Ketua Pengarah Hasil Dalam Negeri* (1995) 2 MSTC 2272 is stated that income means gross income and accepted that there is no law requiring apportionment of income to exempt and non-exempt income. By virtue of s 2(2) of the Act, since 'income' under s 127(5) is not specified to be either adjusted income, or statutory income, or aggregate income, or total income or chargeable income, then 'income' in s 127(5) of the Act must mean gross income. If the legislature had intended that the gifts made in relation to the liability to income tax ought to be deducted in proportion to the dividend income as well as the business income exempted from tax, then a provision would have been inserted in the Act. The finding of the court was that due to the lack of a special provision for the income to be apportioned, the appellant had no power to apportion the gifts however logical it may appear to the appellant (see pp 276C–D, F, 277B–C, E).

[Bahasa Malaysia summary

Responden telah ditaksir untuk cukai pendapatan untuk tahun-tahun penaksiran 1991 dan 1992. Beliau telah membuat rayuan menurut s 99 Akta Cukai Pendapatan 1967 ('Akta tersebut') atas sebab-sebab bahawa perayu telah gagal untuk tidak mengendahkan pengecualian pendapatan daripada pengiraan cukai dalam penaksiran untuk tiba ke pendapatan agregat responden, dan selanjutnya perayu telah salah dalam membahagikan hadiah-hadiah yang dibuat sebagai potongan daripada pendapatan agregat untuk tiba kepada pendapatan bercukai responden. Rayuan telah didengar oleh Pesuruhjaya-Pesuruhjaya Khas Cukai Pendapatan ('pesuruhjaya-pesuruhjaya tersebut') dan bersetuju bahawa pengiraan oleh perayu telah dibuat dengan salah dan oleh itu penaksiran tersebut diperintahkan dikaji semula dengan sewajarnya. Pesuruhjaya-pesuruhjaya memutuskan bahawa sumbangan yang dibuat oleh responden sepatutnya hanya dipotong daripada pendapatan yang tidak dicukai. Perayu yang tidak berpuas hati dengan keputusan pesuruhjaya-pesuruhjaya tersebut, telah merayu ke Mahkamah Tinggi. Persoalan-persoalan yang perlu ditentukan oleh mahkamah adalah: (i) sama ada perbuatan pengecualian cukai pendapatan oleh perayu betul; dan (ii) sama ada pembahagian oleh perayu berhubung hadiah-hadiah tersebut sebagai potongan yang dibenarkan daripada pendapatan agregat adalah betul.

Diputuskan, menolak rayuan tersebut dengan kos:

Tidak dinyatakan di mana-mana di dalam kes *MCIS v Ketua Pengarah Hasil Dalam Negeri* (1995) 2 MSTC 2272 bahawa pendapatan bermaksud pendapatan kasar dan menerima bahawa tiada undang-undang yang menghendaki pembahagian pendapatan untuk dikecualikan dan pendapatan yang tidak dikecualikan. Menurut s 2(2) Akta tersebut, memandangkan 'income' di bawah s 127(5) tidak dispesifikasikan sebagai pendapatan terlaras, atau pendapatan statutori, atau pendapatan agregat, atau pendapatan keseluruhan atau pendapatan bercukai, maka 'income' dalam s 127(5) Akta tersebut harus bermaksud pendapatan kasar. Sekiranya badan perundangan berniat menjadikan hadiah-hadiah yang dibuat berkaitan dengan liabiliti untuk membayar cukai pendapatan harus ditolak selaras dengan pendapatan dividen dan juga pendapatan perniagaan dikecualikan cukai, maka satu peruntukan harus dimasukkan ke dalam Akta tersebut. Penemuan mahkamah adalah oleh kerana tiada peruntukan khas untuk cukai dibahagikan, perayu tiada kuasa untuk membahagikan hadiah-hadiah tersebut walau bagaimana logikal ia kelihatan kepada perayu (lihat ms 276C–D, F, 277B–C, E).]

Notes

Fo cases on exempt income, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 2075–2078.

A **Cases referred to**

Cape Brandy Syndicate v The Commissioners of Inland Revenue (1921) 12 RTC 358 (refd)

Director General of Inland Revenue v Kok Fai Yin Co Sdn Bhd, (Mahkamah Tinggi Kuala Lumpur Rayuan Cukai No 14–1–90)

B *MCIS v Ketua Pengarah Hasil Dalam Negeri* (1995) 2 MSTC 2272 (refd)

Legislation referred to

C Income Tax Act 1967 ss 2(2), 99, 127(5)

Abu Tariq (*Zaleha Adam* with him) (Inland Revenue Board) for the appellant.

Md Ali Zaitun (*Ali Zaitun & Baharudin*) for the respondent.

D **Yaacob Ismail J**:

Appeal

This is an appeal by Director General of Inland Revenue against the decision of the court on 27 August 2002, dismissing the appeal against the E decision of the Special Commissioners of Income Tax.

Brief facts

The respondent was assessed to income tax for the years of assessment 1991 and 1992 for RM2,824,507.62 and RM1,978,744.94 respectively ('the F assessments') following notices of assessment both dated 20 November 1995.

The respondent made an appeal pursuant to s 99 of the Income Tax Act 1967 ('the Act') for the reasons that the appellant has failed to disregard income exempt from the tax computations in the assessment in arriving at G the aggregate income of the respondent, and further the appellant has wrongfully apportioned the gifts made as deductions from the aggregate income to arrive at the chargeable income of the respondent.

The appeal was heard by the Special Commissioners of Income Tax ('the commissioners') after which the commissioners agreed with the H respondent when they decided on 30 April 1999 that the computations by the appellant was wrongfully made and therefore the assessments were ordered to be revised accordingly. The commissioners ruled that the donation made by the respondent should only be deducted against the non-exempt income.

I The appellant being dissatisfied with the decision has requested the commissioners to state a case for the opinion of the High Court. Hence, this appeal before the court.

Decision

After hearing submissions, the appeal was dismissed with costs.

Issues

The issues were:

(i) whether the treatment of income exempt from tax by the appellant is correct; and

(ii) whether the apportionment by the appellant of the gifts as allowable deductions against aggregate income is correct.

Findings

Counsel for the appellant submitted that the word 'income' must mean chargeable income. He maintained that nowhere in the case of *MCIS v Ketua Pengarah Hasil Dalam Negeri* (1995) 2 MSTC 2272 is stated that income means gross income and accepted that there is no law requiring apportionment of income to exempt and non-exempt income.

Counsel for the respondent submitted that the word 'income' in s 127(5) of the Act is not defined as such that it is not a technical word with specific meaning like adjusted income, statutory income, aggregate income, total income and chargeable income. Section 2(2) of the Act reads:

> reference to this Act to income shall, if the income is not described as being income of a particular kind, be construed as a reference to income generally or to gross, adjusted, statutory, aggregate, total or chargeable income as the context and circumstances may required.

Counsel further contended that by virtue of s 2(2) of the Act, since 'income' under s 127(5) is not specified to be either adjusted income, or statutory income, or aggregate income, or total income or chargeable income, then 'income' in s 127(5) of the Act must mean gross income.

It is worthy of note that in a letter to the respondent, the appellant justifies its reason for the apportionment of the gifts as follows:

> Untuk membuat pengiraan cukai pendapatan ke atas punca dividen sahaja (di mana pembayarnya tidak dikecualikan) maka potongan seksyen 44(6) seharusnya dikadarkan. *Walaupun tidak wujud peruntukan khas bagi maksud tersebut pengendalian tersebut adalah logik.* Adalah tidak munasabah keseluruhan jumlah derma di bawah seksyen 44(6) dibenarkan dari satu punca dividen sahaja, sedangkan pendapatan agregat responden adalah termasuk punca perniagaan dan punca dividen. (Emphasis added.)

From the above letter, it would appear that the appellant admits that there is no special provision for the income to be apportioned. Further, it says that despite the lack of such provision, the act of apportionment is logical. It is strange that such reliance on logic should play a part in the discharge of the duties by the appellant to the detriment of the respondent. One would have thought that on such an important matter of levying of tax, surely reliance

on logic is clearly misplaced considering that a tax statute imposes pecuniary burdens on the subject.

In the *Cape Brandy Syndicate v The Commissioners of Inland Revenue* (1921) 12 RTC 358 at p 366, Rowlatt J stated:

> ... it means that in taxation you have to look simply at what is clearly said. There is no room for any intendment; there is no equity about a tax: there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax.

If the legislature has intended that the gifts made in relation to the liability to income tax ought to be deducted in proportion to the dividend income as well as the business income exempted from tax, then a provision would have been inserted in the Act.

In *Director General of Inland Revenue v Kok Fai Yin Co Sdn Bhd* (Mahkamah Tinggi Kuala Lumpur Rayuan Cukai No 14–1–90), Eusoff Chin J (as he then was) stated at p 2 para B–D of the judgment:

> But the function of the appellant like other public bodies, is merely to enforce the law by exercising powers given to it by the law. He should not assume authority or exercise power which is not expressly given to him by the law and if he does so, the exercise of such power is invalid and must be declared illegal.
>
> The Income Tax Act 1967 being a statute which imposes pecuniary burdens on the subject must be interpreted strictly. No person is to be taxed unless the language of the Act clearly imposes the obligation. The language of the Act must not be strained in order to tax a transaction which, had the legislature thought of it, would have covered by appropriate words.

The finding of the court is that due to the lack of a special provision for the income to be apportioned, the appellant has no power to apportion the gifts however logical this may appear to the appellant.

I agree with the reasons stated by the commissioners and confirm their deciding order dated 30 April 1999. Costs to the respondent.

Appeal dismissed with costs.

Reported by Ezatul Zuria Azhari